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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,908	12/30/2003	Susan K. Bronk	18,298	1392

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KIMBERLY-CLARK WORLDWIDE, INC.
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EXAMINER

CRAIG, PAULA L

ART UNIT PAPER NUMBER

3761

DATE MAILED: 07/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/749,908

Applicant(s)

BRONK ET AL.

Examiner

Paula L. Craig

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>5/3/04 & 4/11/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, in Claim 19 the unitary waist elastic element attached to the front waist region must be shown or the feature(s) canceled from the claims. Claims 20-22 are objected to as dependent on Claim 19. No new matter should be entered. Figs. 1-6 are also objected to under 37 CFR 1.84(l) and 1.84(p); see the enclosed PTO-948 form.
2. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

3. Claim 13 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim, or amend the claim to place the claim in proper dependent form, or rewrite the claim in independent form. As Claim 1 requires a unitary waist elastic element shirring the back waist region, the limitation of Claim 13 that the waist region be elastic does not further limit Claim 1.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-3, 5, 8-10, 12-16, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,306,121 to Damaghi et al.

6. For Claim 1, Damaghi shows a disposable absorbent article defining two lateral end edges, two longitudinal side edges, a front waist region, a back waist region, and a crotch region interconnecting the front waist region and back waist region (see first embodiment, Figs. 1, 3, and 9, col. 5, lines 18-28). Note that the first embodiment of Damaghi is stated to include Figs. 1-14, while the second embodiment of Damaghi includes Figs. 15-20, and the third embodiment includes Figs. 21-22 (see col. 4, line 6, to col. 5, line 14). An absorbent core defines a garment surface and a body surface (see Fig. 3A and col. 5, lines 28-33). An outer cover is positioned adjacent the garment surface of the absorbent core; the absorbent core and the outer cover define a chassis (Fig. 3A and col. 5, lines 28-33). A unitary waist elastic element defines a waist elastic element inboard portion and a pair of unitary waist elastic element outboard portions (see Damaghi, elastic belt 115 which includes left and right hand belt portions 115A and 115B, Figs. 1, 3, and 9, and col. 5, lines 39-43). The unitary waist elastic element is attached to the back waist region (col. 5, lines 39-43). The unitary waist elastic element outboard portions extend laterally beyond the chassis of the absorbent article to provide a pair of ears (Figs. 1, 3, and 9). The unitary waist elastic element inboard portion shrirs the back waist region (see Fig. 1).

7. For independent Claim 15, Damaghi teaches a disposable absorbent article defining two lateral end edges, two longitudinal side edges, a front waist region, a back waist region, a crotch region interconnecting the front waist region and back waist region, and an absorbent core defining a garment surface and a body surface, as stated above in paragraph 6 for Claim 1. An outer cover is positioned adjacent the garment

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surface of the absorbent core, and the absorbent core and the outer cover define a chassis; a unitary waist elastic element defines a unitary waist elastic element inboard portion and a pair of unitary waist elastic element outboard portions, as stated above for Claim 1. Damaghi teaches the unitary waist elastic element being attached to the interior surface of the article to the back waist region along a unitary waist elastic element upper edge in the inboard portion (see Damaghi, Fig. 1). The unitary waist elastic element outboard portions extend laterally beyond the chassis of the absorbent article to provide a pair of ears (Fig. 1). The unitary waist elastic element outboard portions are stretchable (col. 5, line 66 to col. 6, line 1). The unitary waist elastic element defines a unitary waist elastic element lower edge, and the unitary waist elastic lower edge in the inboard portion is curvilinear (see Fig. 9). The unitary waist elastic element inboard portion attached to the back waist region shirrs the back waist region (see Fig. 1).

8. For Claim 2, Damaghi shows the unitary waist elastic element attached to an interior surface of the article (see Fig. 1).

9. For Claim 3, Damaghi shows the unitary waist elastic element further defining a unitary waist elastic element upper edge (see Figs. 3 and 9). The unitary waist elastic element upper edge of the unitary waist elastic inboard portion is coterminous with a lateral end edge of the disposable absorbent article (Figs. 3 and 9). For Claim 16, Damaghi teaches the unitary waist elastic element upper edge of the inboard portion is adjacent a lateral end edge of the disposable absorbent article (Figs. 3 and 9).

10. For Claim 5, Damaghi discloses that the unitary waist elastic element defines a unitary waist elastic element lower edge (Fig. 9). The unitary waist elastic element lower edge of the inboard portion is curvilinear (Fig. 9 and col. 6, lines 19-24).

11. For Claim 8, Damaghi discloses the unitary waist elastic element defining a unitary waist elastic element upper edge (see Figs. 1 and 9). The unitary waist elastic element upper edge of the inboard portion is attached to an interior surface of the article, as stated above for Claim 15 in paragraph 7.

12. For Claim 9, Damaghi teaches the unitary waist elastic element defining a unitary waist elastic element lower edge (see Fig. 1). At least a portion of the unitary waist elastic element lower edge of the inboard portion is attached to the interior surface of the article.

13. For Claim 10, Damaghi teaches the unitary waist element defining a unitary waist elastic element lower edge (see Figs. 1 and 9). The unitary waist elastic element lower edge of the outboard portions are configured to provide curved leg cut-outs.

14. For Claim 12, Damaghi teaches a fastener attached to each of the unitary waist elastic element outboard portions (see reference numbers 117 and 119, Figs. 1 and 9, and col. 5, lines 43-51). Similarly, for Claim 18 Damaghi shows a fastener attached to each of the outboard portions of the waist elastic element.

15. For Claim 13, Damaghi discloses the waist region containing the unitary waist elastic element is elastic (col. 5, lines 66-67).

16. For Claim 14, Damaghi shows a second unitary waist elastic element defining a second unitary waist elastic element inboard portion and a second pair of unitary waist

elastic element outboard portions wherein the second unitary waist elastic element is attached to the front waist region (see reference number 127, Fig. 3, and col. 5, lines 63-65). The second unitary waist elastic element outboard portions extend laterally beyond the chassis of the absorbent article to provide a second pair of ears (see reference number 127 of Fig. 3 of Damaghi and col. 5, lines 63-66; compare to waist elastic member 58 in front waist region 22 of Fig. 2 of Applicant's specification). The second unitary waist elastic element inboard portion attached to the front waist region shirrs the front waist region (Damaghi, Fig. 1).

17. Claims 1-3, 6-13, and 15-18 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Publication No. US 2004/0122404 A1 to Meyer et al.

18. For Claim 1, Meyer shows a disposable absorbent article defining two lateral end edges, two longitudinal side edges, a front waist region, a back waist region, and a crotch region interconnecting the front waist region and back waist region (see Fig. 1 and page 4, paragraph 48). An absorbent core defines a garment surface and a body surface (see Fig. 1 and page 5, paragraph 49). An outer cover is positioned adjacent the garment surface of the absorbent core; the absorbent core and the outer cover define a chassis (Fig. 1 and paragraph 49). A unitary waist elastic element defines a waist elastic element inboard portion and a pair of unitary waist elastic element outboard portions (see Fig. 1 and paragraph 50). The unitary waist elastic element is attached to the back waist region (Fig. 1). The unitary waist elastic element outboard portions extend laterally beyond the chassis of the absorbent article to provide a pair of

ears (Fig. 1). The unitary waist elastic element inboard portion shirrs the back waist region (see Fig. 1 and paragraph 50).

19. For independent Claim 15, Meyer teaches a disposable absorbent article defining two lateral end edges, two longitudinal side edges, a front waist region, a back waist region, a crotch region interconnecting the front waist region and back waist region, and an absorbent core defining a garment surface and a body surface, as stated above in paragraph 18 for Claim 1. An outer cover is positioned adjacent the garment surface of the absorbent core, and the absorbent core and the outer cover define a chassis; a unitary waist elastic element defines a unitary waist elastic element inboard portion and a pair of unitary waist elastic element outboard portions, as stated above for Claim 1. Meyer teaches the unitary waist elastic element being attached to the interior surface of the article to the back waist region along a unitary waist elastic element upper edge in the inboard portion (see Meyer, Fig. 1). The unitary waist elastic element outboard portions extend laterally beyond the chassis of the absorbent article to provide a pair of ears (Fig. 1). The unitary waist elastic element outboard portions are stretchable (see paragraphs 50-51). The unitary waist elastic element defines a unitary waist elastic element lower edge, and the unitary waist elastic lower edge in the inboard portion is curvilinear (see Fig. 1). The unitary waist elastic element inboard portion attached to the back waist region shirrs the back waist region (see Fig. 1 and paragraph 50).

20. For Claim 2, Meyer shows the unitary waist elastic element attached to an interior surface of the article (see Fig. 1).

21. For Claim 3, Meyer shows the unitary waist elastic element further defining a unitary waist elastic element upper edge (see Fig. 1). The unitary waist elastic element upper edge of the unitary waist elastic inboard portion is coterminous with a lateral end edge of the disposable absorbent article (Fig. 1). For Claim 16, Meyer teaches the unitary waist elastic element upper edge of the inboard portion is adjacent a lateral end edge of the disposable absorbent article (Fig. 1).

22. For Claim 5, Meyer discloses that the unitary waist elastic element defines a unitary waist elastic element lower edge (Fig. 1). The unitary waist elastic element lower edge of the inboard portion is curvilinear (Fig. 1).

23. For Claim 6, Meyer shows the unitary waist elastic element lower edge of the inboard portion having a radius of curvature. While Meyer does not expressly disclose a radius of curvature of less than 25 cm, this value is considered to be inherent in Meyer. The structure disclosed by Meyer appears from the drawings to be nearly identical in shape to the inboard portion of the unitary waist elastic element lower edge disclosed by Applicant, differing in that the radius of curvature of the inboard portion of the lower edge is smaller in Meyer (Meyer, Fig. 1, and Applicant's specification, Fig. 2). The waist elastic 38 of Meyer is stated to provide a comfortable fit, which is also the purpose of Applicant's unitary waist elastic element (see Meyer, paragraph 50, and Applicant's specification, page 18, lines 13-15). Therefore, absent evidence to the contrary, the structure taught by Meyer is presumed to have Applicant's claimed radius of curvature of less than 25 cm. *In re Schreiber*, 128 F.3d 1473, 44 USPQ2d 1429 (Fed. Cir. 1997); *In re Fitzgerald*, 619 F.2d 67, 70, 205 USPQ 594, 596 (CCPA 1980).

24. For Claim 7, Meyer shows the unitary waist elastic element defining a unitary waist elastic lower edge. The unitary waist elastic element lower edge defines a "w" shape (Meyer, Fig. 1).

25. For Claim 8, Meyer discloses the unitary waist elastic element defining a unitary waist elastic element upper edge (see Fig. 1). The unitary waist elastic element upper edge of the inboard portion is attached to an interior surface of the article, as stated above for Claim 15 in paragraph 19.

26. For Claim 9, Meyer teaches the unitary waist elastic element defining a unitary waist elastic element lower edge (see Fig. 1). At least a portion of the unitary waist elastic element lower edge of the inboard portion is attached to the interior surface of the article.

27. For Claim 10, Meyer teaches the unitary waist element defining a unitary waist elastic element lower edge (see Fig. 1). The unitary waist elastic element lower edge of the outboard portions are configured to provide curved leg cut-outs.

28. For Claim 11, Meyer teaches the curved leg cut-outs having a radius of curvature (Fig. 1). While Meyer does not specify a radius of curvature of less than 25 cm, this value is considered to be inherent in Meyer, for the same reasons as stated above in paragraph 23.

29. For Claim 12, Meyer teaches a fastener attached to each of the unitary waist elastic element outboard portions (see reference number 40 of Fig. 1 and paragraph

51). Similarly, For Claim 18 Meyer shows a fastener attached to each of the outboard portions of the waist elastic element.

30. For Claim 13, Meyer discloses the waist region containing the unitary waist elastic element is elastic (paragraph 50).

Claim Rejections - 35 USC § 103

31. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

32. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

33. Claims 4, 6, 11, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,306,121 to Damaghi et al.

34. For Claim 4, Damaghi shows the unitary waist elastic element as defining a unitary waist elastic element upper edge (see Fig. 1). The upper edge of the inboard portion of the unitary waist elastic element is located inward of the lateral end edge of the absorbent article (Fig. 1). Similarly, for Claim 17 Damaghi shows the unitary waist

elastic element upper edge of the inboard portion being located some distance from the lateral end edge of the disposable absorbent article. For Claim 6, Damaghi shows the lower edge of the inboard portion of the unitary waist elastic element lower edge having a radius of curvature (Fig. 9). For Claim 11, Damaghi shows the curved leg cut-outs having a radius of curvature (Fig. 9).

35. For Claims 4 and 17, Damaghi does **not** expressly state that the upper edge of the unitary waist elastic inboard portion is at least 5 mm from the lateral end edge. For Claim 6, Damaghi does not expressly show the lower edge of the inboard portion of the unitary waist elastic element lower edge having a radius of curvature of less than 25 cm; the value of the radius of curvature of the lower edge of the inboard portion is not specified. For Claim 11, Damaghi does not expressly show the curved leg cut-outs having a radius of curvature of less than 25 cm; the radius of curvature of the curved leg cut-outs is not specified.

36. For Claims 4 and 17, based on the typical size of a disposable diaper compared with the distance shown in Fig. 1 of Damaghi between the elastic belt and the lateral end edge of the absorbent article, Damaghi suggests a structure substantially identical to the claimed structure. In addition, Applicant's specification does not indicate that the extension of the upper edge of the unitary waist elastic inboard portion at least 5 mm from the lateral end edge serves any stated purpose or solves any particular problem in itself, but states that this is the result of choosing when to cut the diapers apart in the manufacturing process (Applicant's specification, page 17, lines 12-24). Extending the upper edge of the unitary waist elastic inboard portion 5 mm or more from the lateral

end edge is therefore considered a design choice, and it would have been obvious to one of ordinary skill in the art at the time of the invention to extend the upper edge of the inboard portion 5 mm or more from the lateral end edge.

37. For Claim 6, the absorbent article of Damaghi may be used as a disposable diaper for infants or for an adult incontinent guard, and is designed to securely fit against the body contours of the wearer, which would require appropriate adjustments in size depending on the size of the wearer (Damaghi, col. 1, lines 10-24). Fig. 9 of Damaghi suggests a radius of curvature which is on the order of the length of a typical disposable diaper, possibly smaller. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disposable absorbent article of Damaghi to include the unitary waist elastic element lower edge of the inboard portion having a radius of curvature of less than 25 cm, to securely fit the body contours of the wearer. For Claim 11, Fig. 9 of Damaghi suggests a radius of curvature for the curved leg cut-outs on the order of the width of a typical diaper. It would have been obvious to include the curved leg cut-outs having a curvature of less than 25 cm, to securely fit the body contours of the wearer. Radius of curvature is a result effective variable, since it directly affects the fit to a wearer's waist or leg. The discovery of an optimum value of a result effective variable is ordinarily within the skill in the art. See *In re Boesch and Slaney*, 205 USPQ 215 (CCPA 1980).

38. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,306,121 to Damaghi et al. in view of U.S. Patent Publication No. US 2005/0010188 A1 to Glaug et al.

39. For Claim 7, Damaghi shows all the limitations of Claim 1, as stated above in paragraph 6. For Claim 7, Damaghi does not show the lower edge of the unitary waist elastic element defining a "w" shape.

40. For Claim 7, Glaug shows a unitary waist elastic element lower edge defining a "w" shape (Fig. 1). The Examiner notes that the claim does not require the "w" shape to extend in any particular direction. Glaug teaches disposable undergarments for children and adults, and states that the disposable undergarments are economical to manufacture and provide good protection from leakage, good fit, and comfort (Glaug, paragraph 1). The shape of the leg openings 52 and 56 of Glaug ergonomically accommodates the portion of the wearer's leg that merges with the torso, providing for comfortable sitting and standing (Fig. 1 and page 4, paragraph 39). The rear projections 62 and 64 of Glaug are also w-shaped, and are designed to cover the wearer's buttocks to collect and retain waste (Fig. 1 and paragraph 39). It would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Damaghi to include the unitary waist elastic element lower edge defining a "w" shape, to provide protection from leakage, good fit, and comfort.

41. Claims 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,306,121 to Damaghi et al. in view of U.S. Patent Publication No. US 2002/0151863 A1 to Toyoshima.

42. For Claim 19, Damaghi teaches a disposable absorbent article defining two lateral end edges, two longitudinal side edges, an interior surface, an exterior surface, a

front waist region, a back waist region, a crotch region interconnecting the front waist region and back waist region, and an absorbent core defining a garment surface and a body surface (see Damaghi, first embodiment, Figs. 1, 3, 3A, and 9, and col. 5, lines 18-33). An outer cover is positioned adjacent the garment surface of the absorbent core, and the absorbent core and the outer cover define a chassis; a unitary waist elastic element defines a unitary waist elastic element inboard portion and a pair of unitary waist elastic element outboard portions, as stated above for Claim 1 in paragraph 6. Damaghi shows the waist elastic element outboard portions extending laterally beyond the chassis of the absorbent article to provide a pair of ears, as stated above for Claim 15 in paragraph 7. Damaghi shows the unitary waist elastic element being attached to the front waist region, by means of the fasteners when the article is being worn (Damaghi, Fig. 1). Damaghi does **not** show the waist elastic element inboard portion attached to the front waist region shirring the front waist region. Toyoshima teaches a disposable diaper with a unitary waist elastic element attached to the front waist region (see Toyoshima, Figs. 1, 2, and 4). Toyoshima teaches the waist elastic element inboard portion attached to the front waist region shirring the front waist region (Toyoshima, Fig. 1). Toyoshima confirms that a disposable diaper may be used with no modification using either end as the front, and that this enables a disposable diaper to be put on an infant in a face down lying position or when crawling (see Toyoshima, page 3, paragraph 37, and page 4, paragraph 46). It would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Damaghi to include the unitary waist elastic element attached to either the front or back

waist region, and the waist elastic element inboard portion attached to either the front or back waist region shirring the front or back waist region respectively, to allow the diaper to be put on an infant in various positions.

43. For dependent Claim 20, Damaghi/Toyoshima shows the waist elastic element upper edge in the inboard portion being adjacent a lateral end edge of the disposable absorbent article; see the above analysis of Damaghi for Claim 16 in paragraph 9. For Claim 21, Damaghi/Toyoshima shows the waist elastic element upper edge in the inboard portion being at least 5 mm from a lateral end edge of the disposable absorbent article; see the above analysis of Damaghi for Claim 4 in paragraph 36. For Claim 22, Damaghi/Toyoshima teaches a fastener attached to each of the outboard portions of the waist elastic element, as stated above for Claim 12 in paragraph 14. Dependent Claims 20-22 would therefore also be obvious over Damaghi/Toyoshima.

Conclusion

44. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 4,701,173 to Zehner et al. shows an absorbent article with a stretchable outer cover forming a pocket at the waist. U.S. Patent No. 5,624,420 to Bridges et al., 5,749,865 to Yamamoto et al., 5,782,819 to Tanzer et al., 5,899,895 to Robles et al., 6,336,922 to VanGompel et al.; and U.S. Patent Publication Nos. US 2004/0006326 A1 to Nakajima et al., US 2004/0122411 A1 to Hancock-Cooke; and European Patent Application No. EP 1249214 A2 to Uni-Charm Corporation all show disposable absorbent articles with a unitary waist elastic element. U.S. Patent

No. 5,938,652 to Sauer and 6,231,558 to Mosley show unitary waist elastic elements in which the lower edge of the inboard portion is curvilinear, with a small radius of curvature. U.S. Patent No. 5,752,946 to Boberg et al. shows a disposable absorbent article with an elastic pocket having a small radius of curvature. U.S. Patent No. 5,940,887 to Rajala et al. and 6,179,820 to Fernfors and 6,210,387 to Rudberg et al. show unitary waist elastic elements having a "w" shape lower edge. U.S. Patent Application Publication No. US 2002/0156449 A1 to Kling et al. shows an arrangement of elastic on the interior surface of a diaper. U.S. Patent Application Publication No. US 2003/0135188 A1 to Yoshimasa shows an absorbent article having a waist elastic element having an upper edge which extends beyond the lateral end edge of the absorbent article.

45. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paula L. Craig whose telephone number is (571)272-5964. The examiner can normally be reached on 8:30AM-5:00PM M-F.

46. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571)272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

TATYANA ZALUKAEVA
PRIMARY EXAMINER



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47. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Paula L Craig
Examiner
Art Unit 3761

PLC